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FILED
MAY 21 1960
JAMES R. BROWNING, Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

JAMES MALCOLM BEARDEN

Petitioner

versus

UNITED STATES OF AMERICA

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

M. NEIL ANDREWS
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Atlanta 3, Georgia

Counsel for Petitioner

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959

NO.

JAMES MALCOLM BEARDEN

Petitioner

versus

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Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Fifth Circuit entered in the above case on April 22, 1960.

OPINIONS BELOW

The District Court for the Northern District of Georgia rendered no opinion in this case. The opinion of the Court of Appeals for the Fifth Circuit has not yet been reported but is set out in the record at Pages 5, 6 and 7.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was made and entered on April 22, 1960. Copy of the opinion and judgment are appended to this petition in the Appendix at Pages 5, 6 and 7. The jurisdiction of this Court is invoked under Title 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

Petitioner was indicted and found guilty on a charge of wilfully failing and refusing to render a correct return of the disposition of 183 - 100 pound bags of sugar in violation of Sections 5213 and 5609 of Title 26 U. S. Code. The Circuit Court of Appeals affirmed the District Court's sentence on the ground that there was adequate evidence to support the jury verdict.

The sole question presented is:

Is the evidence in this case sufficient to show a disposition of the sugar involved so as to require the defendant to have made a return as provided in Title 26 Section 5213 U. S. Code.

STATUTES INVOLVED

The pertinent portions of Title 26 U. S. C. A. 5213 and Title 26 U. S. C. A. 5609 are set forth in the appendix at Pages 7 and 8.

STATEMENT

We will attempt to state only the facts which bear on the question presented. The evidence shows that investigators of the Alcohol and Tobacco Tax Division of the Treasury Department observed the petitioner leave a wholesale grocery establishment in Atlanta, Georgia with a tractor-trailer loaded with 300 - 100 pound bags of sugar, and followed the petitioner to Dawsonville, Georgia where he parked the trailer on property belonging to him and left it padlocked. The agents set up a twenty-four hour a day surveillance of the trailer which went on from June 14, 1958 until June 23, 1958. While watching this trailer the agents did not observe anyone remove any sugar from the trailer, but did observe the petitioner near the trailer during one night of the surveillance. On June 23, 1958 the agents secured a search warrant, opened the trailer and found that 183 - 100 pound bags had been removed therefrom. They also observed the grass and weeds between the trailer and a fence in the back yard of the petitioner's property broken and trodden upon, and also indications in the grass and weeds beyond said fence that a truck had been parked there. The position of the Government was that the defendant had removed the 183 - 100 pound bags of sugar and loaded them on a truck and removed them from the location, and that this amounted to a disposition of the sugar which required a return under the requirements of Title 26 Section 5213 U. S. C. A.

The Circuit Court of Appeals held that this was sufficient evidence to show such a disposition.

REASONS FOR GRANTING THE WRIT

1. The decision of the Court below should be reviewed because it has decided an important question of Federal law which has never been passed upon by this Court, and petitioner respectfully submits that the question is one of great importance in the administration of the Federal Tax laws as they relate to materials used in the manufacture of distilled spirits and is one of increasing importance to all persons who deal in such materials.

2. It is vitally important to the public generally to know definitely whether or not the mere removal from one place to another of materials used in the manufacture of distilled spirits will require them to make a return of such removal even though there has been actually no transfer of title of such materials to anyone.

3. The question presented by this case is one of great and increasing significance in the administration of the Federal Tax laws as it relates to such materials because of what, petitioner respectfully contends, is the over zealous administration of such laws by the agents of the Treasury Department.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

M. Neil Andrews

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610 Fulton National Bank Bldg.
Atlanta 3, Georgia

Counsel for Petitioner

APPENDIX TO PETITION FOR CERTIORARI

OPINION OF UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 18036

JAMES MALCOLM BEARDEN
Appellant

versus

UNITED STATES OF AMERICA
Appellee

Appeal from the United States District Court for the Northern District of Georgia

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(April 22, 1960)

Before RIVES, Chief Judge, and HUTCHESON and BROWN, Circuit Judges

PER CURIAM: This appeal is from a judgment of conviction under a one count indictment charging the

defendant with wilfully failing and refusing to render a correct return of the disposition of 183 100-pound bags of sugar in violation of Sections 5213 and 5609, Title 26, U. S. Code. The main contention is that the defendant was entitled to a judgment of acquittal on the ground of insufficiency of the evidence. We think that there was adequate evidence to support the jury's verdict. We find no reversible error in the Court's charge. The judgment is.

AFFIRMED

Test: Edward W. Wadsworth
Clerk, U. S. Court of Appeals,
Fifth Circuit
New Orleans, Louisiana

JUDGMENT OF UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

JUDGMENT

JAMES MALCOLM BEARDEN,

No. 18036

versus

UNITED STATES OF AMERICA.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Georgia, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

TITLE 26, SECTION 5213, U. S. C. A.:

"Section 5213. Return of materials used in the manufacture of distilled spirits.

(a) Requirement. — Every person disposing of any substance of the character used in the manufacture of distilled spirits shall, when required by the Secretary or his delegate, render a correct return, in such form and manner as the Secretary or his delegate may by regulations prescribe, showing the names and addresses

of the persons to whom such disposition was made, with such details, as to the quantity so disposed of or other information which the Secretary or his delegate may require as to each disposition, as will enable the Secretary or his delegate to determine whether all taxes due with respect to any distilled spirits manufactured from such substances have been paid. As used in this section —

(1) the term "distilled spirits" includes all products referred to in section 5002 (b); and

(2) the term "substance of the character used in the manufacture of distilled spirits" includes, but not by way of limitation, molasses, corn sugar, cane sugar, and malt sugar.

(b) Penalty.

For penalty for violation of subsection (a) see section 5609."

TITLE 26, SECTION 5609, U. S. C. A.:

"Section 5609. Penalty relating to return of materials used in the manufacture of distilled spirits.

Any person who wilfully violates any provision of section 5213 (a), or of any rules or regulations issued thereunder, and any officer, director, or agent of any such person who knowingly participates in such violation, shall upon conviction be fined not more than $500 or be imprisoned for not more than one year, or both.